

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CYNTHIA A. BENNETT and GUY E. MILLER,

Plaintiffs,

VS.

FIDELITY MANAGEMENT AND RESEARCH  
COMPANY, et. al.,

Defendants.

Civil Action No. 04cv11651 (MLW)

NANCY HAUGEN, MICHAEL F. MAGNAN,  
KAREN L. MAGNAN, ROSE M.  
IANNACONE, PRESLEY C. PHILLIPS,  
ANDREA M. PHILLIPS, and CINDY  
SCHURGIN, for the use and benefit of FIDELITY  
MAGELLAN AND FIDELITY CONTRAFUND.

Plaintiffs,

VS.

FIDELITY MANAGEMENT AND RESEARCH  
COMPANY, et. al.,

Defendants.

Civil Action No. 04cv11756 (MLW)

**THE *GILLIAM* PLAINTIFFS' MOTION  
TO INTERVENE AND TO STAY ALL PROCEEDINGS**

The *Gilliam* Plaintiffs,<sup>1</sup> by their counsel, hereby move this Court for entry of an Order (attached hereto): (i) granting intervention by the *Gilliam* Plaintiffs to the actions captioned *Haugen v. Fidelity Management & Research Co.*, No. 04-cv-11756 (MLW) and *Bennett v. Fidelity Management and Research Co.*, No. 04-cv-11651 (MLW); and (ii) staying the *Haugen* and *Bennett* actions pending resolution of the *Gilliam* Plaintiffs' Motion for Consolidation. In support of this Motion, the *Gilliam* Plaintiffs submit herewith a Memorandum of Law and [Proposed] Order.

Dated: December 8, 2004

**MOULTON & GANS, P.C.**

By: /s/ Nancy Freeman Gans  
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<sup>1</sup> The *Gilliam* Plaintiffs consist of the plaintiffs in the following five cases: *Gilliam v. Fidelity Management & Research Co.*, No. 04-cv-11600 (NG); *Bogatin Family Trust v. Fidelity Management and Research Co.*, No. 04-cv-11642 (NG); *Awali v. Fidelity Management and Research Co.*, No. 04-cv-11709 (MLW); *Groeschel v. Fidelity Management and Research Co.*, No. 04-cv-11735 (GAO); and *Fallert v. Fidelity Management and Research Co.*, No. 04-cv-11812 (MLW) (collectively these five cases will be referred to as the "*Gilliam* Plaintiffs"). No party is disputing that these five cases should be consolidated. The only issue is whether *Bennett* and *Haugen* should also be consolidated. See *Bennett v. Fidelity Management and Research Co.*, No. 04-cv-11651 (MLW); *Haugen v. Fidelity Management & Research Co.*, No. 04-cv-11756 (MLW).

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Joseph F. Martingano, Michael S. Mendolia,  
Patricia K. Munshaw, Brian D. Reese, Jay J.  
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**LOCAL RULE 7.1(A)(2) CERTIFICATE**

I, Nancy Freeman Gans, hereby certify that on December 6 – 8, 2004, I spoke by telephone with the following counsel regarding The Gilliam Plaintiffs' Motion to Intervene and to Stay All Proceedings: (1) Michelle H. Blauner, Esquire, Shapiro Haber & Urmey, counsel for the Haugen plaintiffs, who opposes the motion; (2) Matthew J. Tuttle, Esquire, Perkins, Smith & Cohen, counsel for the Bennett plaintiffs, who opposes the motion; and (3) Wm. Shaw McDermott, Esquire, Kirkpatrick & Lockhart, counsel for the Fidelity Funds, who opposes the motion. Also, I notified John Kiernan, Esquire, Debevoise & Plympton, counsel for the Individual Defendants in the Gilliam, Bogatin Family Trust, Awali, Groeschel and Fallert cases, of the filing of this Motion. James S. Dittmar, Esquire, Goodwin Proctor LLP, counsel for Fidelity Management and Research Company and FMR Co., Inc., is aware of the Gilliam Plaintiffs' intention to file the above motion, but because of conflicting court and travel schedules, Mr. Dittmar and I have not been able to consult. As well, I have notified James W. Benedict, Esquire, Milbank, Tweed, Hadley & McCloy, LLP, also counsel for Fidelity Management and Research Company and FMR Co., Inc., of the filing of this Motion, but also have not been able to reach him.

/s/ Nancy Freeman Gans  
Nancy Freeman Gans

**CERTIFICATE OF SERVICE**

I, Daniel P. Dietrich, hereby certify that I served a copy of: (1) The *Gilliam* Plaintiffs' Motion to Intervene and to Stay All Proceedings; (2) Memorandum of Law in Support of the *Gilliam* Plaintiffs' Motion to Intervene and to Stay All Proceedings; and (3) [Proposed] Order Granting Intervention and Staying all Proceedings upon counsel for all parties by facsimile this 8<sup>th</sup> day of December, 2004.

/s/ Daniel P. Dietrich  
Daniel P. Dietrich